



## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

[Docket No. TSA–2003–14610]

### Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice, temporary exemption.

**SUMMARY:** TSA is granting a temporary exemption from requirements regarding the expiration of TSA Security Threat Assessments (STAs) for Hazardous Materials Endorsement (HME) holders, subject to requirements set forth in this exemption. For the duration of this exemption, states may extend the expiration date of an HME that expires between July 1, 2022 and December 27, 2022, for a period of up to 180 days. TSA has determined it is in the public interest to grant the exemption at this time to ensure that the HME renewal process does not exacerbate the current difficulties with the transfer and movement of cargo nationwide and at the ports. TSA may extend this exemption depending on HME enrollment volumes and supply chain challenges.

**DATES:** This exemption becomes effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and remains in effect through December 27, 2022, unless otherwise modified by TSA through a notice published in the *Federal Register*.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Background

Approximately 80 percent of goods are shipped by truck in the United States today. These shipments include necessities, such as food, medicine, and protective

equipment, as well as discretionary goods. Consumer purchases of discretionary goods fell dramatically during the height of the Coronavirus 2019 (COVID-19) pandemic, but spiked following the development of vaccines and as a gradual return to normal daily life progressed. Meanwhile, the pandemic exacerbated longstanding challenges in the trucking industry, such that demand for drivers with a valid state-issued commercial driver's license (CDL) with an HME has increased significantly. These supply chain issues and increasing consumer demands have increased pressure on motor carriers who require qualified, trained, and licensed drivers to transport goods. As a result, there is a significant need for commercial drivers who are authorized to transport all goods, including hazardous materials.

The USA PATRIOT Act of 2001 requires individuals who transport hazardous materials via commercial motor vehicle to undergo an STA conducted by TSA.<sup>1</sup> As described in the implementing regulations at 49 CFR part 1572, no state may issue or renew an HME for an individual's CDL, unless the state first receives a Determination of No Security Threat for the individual from TSA following the TSA-conducted STA. *See* 49 CFR 1572.13(a). The STA for an HME consists of checks of criminal, immigration, and security threat databases.<sup>2</sup> The STA and HME remain valid for up to five years.

An individual seeking renewal of an HME must initiate an STA at least 60 days before expiration of their current HME.<sup>3</sup> The process of initiating an STA requires the individual to submit information to either the state licensing agency or a TSA enrollment center, including fingerprints and the information required by 49 CFR 1572.9,<sup>4</sup> at least 60 days before the expiration of the HME.<sup>5</sup>

Supply chain issues, have increased the demand for drivers with a valid state-

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<sup>1</sup> Pub. L. 107-56 (Oct. 26, 2001; 115 Stat. 396), 1012(a)(1), *codified as amended at* 49 U.S.C. 5103a.

<sup>2</sup> For purposes of this Notice, the term 'security threat' includes terrorism watchlists, and intelligence and law enforcement databases.

<sup>3</sup> 49 CFR 1572.13(b).

<sup>4</sup> 49 CFR 1572.15.

<sup>5</sup> 49 CFR 1572.13(b).

issued CDL with an HME. The pandemic exacerbated longstanding challenges in the trucking industry, including high turnover rates, an aging workforce, long hours away from home, and time spent waiting—often unpaid—to load and unload at congested ports, warehouses, and distribution centers. As a result of the increased demand, more than 50,000 CDLs and Learners Permits have been issued each month in 2021, which is 20 percent higher than the 2019 monthly average and 72 percent higher than the 2020 monthly average.<sup>6</sup>

Even though all shipments do not include hazardous materials, employers want to have commercial drivers with HMEs available as a matter of efficiency to ensure any driver is authorized to carry any shipment. Similar to the demand for CDLs, enrollments for HMEs have increased from approximately 15,000 per month to 20,000 per month in calendar years 2021 and 2022. Despite a nearly 30 percent decrease in HME enrollments during the pandemic, new enrollments and renewals are exceeding historical volumes to meet the demand for qualified drivers. The increased demand for HMEs, as well as other credentialing requiring STAs conducted by TSA, has increased processing times for some individuals with potential disqualifying factors. Some applications require 60 days for TSA to complete the adjudication of potential disqualifying factors and make an eligibility determination.

As noted above, current regulatory requirements prohibit states from issuing or renewing an HME until TSA makes its final eligibility determination.<sup>7</sup> States also may issue an HME to a driver who holds a valid Transportation Worker Identification Credential (TWIC®) which includes completion of the same STA.<sup>8</sup> There are

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<sup>6</sup> White House (2021, December 16). *Biden-Harris Trucking Action Plan*. Available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-%E2%81%A0harris-administration-trucking-action-plan-to-strengthen-americas-trucking-workforce/>.

<sup>7</sup> 49 CFR 1572.13(a).

<sup>8</sup> Pub. L. 115-254, 132 Stat. 3186 (Oct. 5, 2018) 1978, *codified at* 49 U.S.C. 5103a. In March 2020, TSA published an exemption as an interim measure to conform regulatory requirements to the statute. The exemption includes guidance for states to validate a TWIC card; however, few states have implemented this process or accept TWIC for HME issuance.

approximately 250,000 drivers whose HME STA has expired or will expire in calendar year 2022. Approximately 135,000 of those HME STAs will expire in the next 180 days or 22,500 per month for the next six months.

TSA published a similar temporary exemption for HME renewals on April 8, 2020, to provide regulatory relief during the height of the COVID-19 pandemic<sup>9</sup> to ensure there were enough authorized drivers in the supply chain to deliver needed goods. In that exemption, TSA permitted states to extend the expiration date for HMEs for up to 180 days. TSA subsequently issued two 90-day extensions, which extended availability of the exemption to December 31, 2020.<sup>10</sup>

### **Authority and Determination**

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.<sup>11</sup> TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs. TSA based this determination on the need for commercial drivers with an HME to continue to work without interruption while supply chain pressures ease and TSA is able to address increasing HME enrollment volumes, which have impacted STA processing times. Extending the HME expiration date through this exemption would not compromise the current level of transportation security because TSA conducts recurrent security threat checks on HME holders and takes action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA uses data previously submitted by these individuals to conduct recurrent security threat vetting to ensure that they do not pose a security threat.

This exemption permits states to extend the expiration date for an HME for up to

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<sup>9</sup> 85 FR 19767.

<sup>10</sup> 85 FR 46152 (July 31, 2020); 85 FR 68357 (Oct. 28, 2020).

<sup>11</sup> 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020.

180 days for eligible individuals with an HME that expires between July 1, 2022 and December 27, 2022, even if the individual did not initiate or complete submission of required information for an STA at least 60 days before expiration of the HME.<sup>12</sup>

Consistent with the requirements in 49 CFR 1572.13(b), if the state grants an extension to an individual, the State must, if practicable, notify the individual that the state is extending the expiration date of the HME, the date that the extension will end, and the individual's responsibility to initiate the STA renewal process at least 60 days before the new expiration date. If it is not practicable for a State to give individualized notice to drivers, the state may publish general notice, for example, on the appropriate website.

The purpose of this exemption is to allow states to provide commercial drivers with up to six months of relief from action necessary to meet TSA's STA renewal requirements during a period of increased demand for commercial drivers. It allows for the 60 days TSA needs to complete processing of the individual's application for STA renewal once it is submitted. The exemption permits, but does not require, states to extend the expiration date for HMEs.

By permitting states to extend the expiration date of HMEs within the scope of this exemption, TSA better positions states to ensure that CDL holders with HMEs will be able to continue to provide their critical services amid supply chain pressures and increased demand for STAs, licenses, and endorsements. TSA has determined that there is little risk to transportation security associated with the exemption. The exemption is subject to the following conditions:

- 1) The extension applies only to individuals who currently hold an HME;

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<sup>12</sup> This exemption remains in effect through December 27, 2022, unless otherwise modified by TSA through a notice published in the *Federal Register*. TSA believes that the option for further modification, as noted above, provides clearer notice to and better certainty for states administering the program.

- 2) The extension is for a limited time, dependent on the duration and scope of supply chain pressures and increased HME enrollment volumes for drivers, and subject to possible modification by TSA before the closure of the effective period; and
- 3) TSA will continue to conduct security threat checks of these during the period of the extension and retain its full authority to immediately revoke or suspend an individual's STA (Determination of No Security Threat) and to order a state to revoke an individual's HME.<sup>13</sup>

### **Exemption**

*State Exemption.* During the effective period of this exemption, states are exempt from the requirement in 49 CFR 1572.13(a) prohibiting renewal of an eligible individual's HME for a CDL, unless the state receives a new STA (Determination of No Security Threat) from TSA. For the duration of this exemption, a state may extend the expiration date of an eligible individual's HME for a period of no more than 180 days without a new STA. The state must notify each eligible individual that he or she is subject to an STA for renewal of the HME and that he or she must initiate the STA at least 60 days before the extended expiration date of the HME. If it is not practicable for a state to give individualized notice to drivers, the state may publish general notice, for example, on the appropriate website. TSA will continue to recurrently vet these individuals against terrorism and other governmental watch lists and databases and reserves authority under 49 CFR 1572.5(b) and 1572.13 to direct a state to revoke an individual's HME immediately and at any time.

For purposes of this exemption, an *eligible individual* is defined as an individual who held a valid, unexpired HME with an STA (Determination of No Security Threat) on or after July 1, 2022, which HME has expired or would otherwise expire between that date and the close of the effective period of this exemption.

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<sup>13</sup> See 49 CFR 1572.5(b) and 1572.13.

*Limits of Exemption.* This exemption does not apply to new HMEs nor does it affect any other requirements applicable to obtaining a commercial driver's license under 49 CFR parts 383 and 384.

**David P. Pekoske,**

*Acting Administrator.*

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